

**RESOLUTION NO. 12 – 136**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, PURSUANT TO SECTION 2-322 OF THE CITY CODE, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH SPRINT SOLUTIONS, INC. FOR THE PROVISION OF CELLULAR PHONE SERVICES FOR THE CITY OF DORAL POLICE DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$20,000.00; RECOGNIZING THAT THIS AGREEMENT IS BASED ON THE EXISTING AGREEMENT BETWEEN THE STATE OF FLORIDA AND SPRINT SOLUTIONS, INC. WHICH WAS COMPETITIVELY ENTERED INTO IN A MANNER SIMILAR TO THAT SET FORTH IN CHAPTER 2, ARTICLE V, OF THE CITY CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Doral Police Department seeks cellular services from Sprint Solutions, Inc.; and

**WHEREAS**, Staff respectfully requests that the City Council authorize the City Manager to negotiate and enter into an agreement with Sprint Solutions, Inc. for the provision of cellular phone services for the City of Doral Police Department in an amount not to exceed \$20,000.00; and

**WHEREAS**, Staff further requests that the City Council recognize that that this agreement is based on the existing agreement (Exhibit "A") between the State of Florida and Sprint Solutions, Inc., which was competitively entered into in a manner similar to that set forth in Chapter 2, Article V, of the City Code.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:**

**Section 1.** The City Council hereby authorizes the City Manager to negotiate and enter into an agreement with Sprint Solutions, Inc. for the provision of cellular

phone services for the City of Doral Police Department in an amount not to exceed \$20,000.00.

**Section 2.** The City Council further recognizes that this agreement is based on the existing agreement (Exhibit "A") between the State of Florida and Sprint Solutions, Inc., which was competitively entered into in a manner similar to that set forth in Chapter 2, Article V, of the City Code.

**Section 3.** This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Vice Mayor DiPietro and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Michael DiPietro	Yes
Councilman Luigi Boria	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED and ADOPTED this 30<sup>th</sup> day of October, 2012.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE CITY OF DORAL:

  
\_\_\_\_\_  
JIMMY MORALES, CITY ATTORNEY

# EXHIBIT “A”



RICK SCOTT  
Governor

DEPARTMENT OF MANAGEMENT  
**SERVICES**

JOHN P. MILES  
Secretary

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## **MOBILE COMMUNICATION SERVICES**

### **SPRINT CONTRACT**

**CONTRACT NO.: DMS-10/11-008B**

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**Attachments:**

**Exhibit 1 - Technical Requirements**

**Exhibit 2 - Business Process & Operation**

**Exhibit 3 - Pricing**

**Exhibit 4 - Enhanced Services and Solutions**

**Exhibit 5 - SLA Matrix**

**Exhibit 6 - Contract No.: DMS-0304-063 (MA4440) and Contract No.: 1523-ACS**

**Exhibit 7- Discounts**

## MOBILE COMMUNICATION SERVICES AGREEMENT

THIS MOBILE COMMUNICATION SERVICES AGREEMENT (“Agreement”), effective as of the last date signed below (the “Effective Date”), is between the Florida Department of Management Services, a State agency with its principal place of business at 4050 Esplanade Way, Suite 200, Tallahassee, FL 32399-0950 (the “Department” or “Customer”), and Sprint Solutions, Inc., a Delaware corporation with its principal place of business at 12502 Sunrise Valley Drive, Reston, VA 20196 (“Service Provider” or “Sprint”).

WHEREAS, Service Provider provides wireless voice and data services in certain areas of Florida; and

WHEREAS, the Department issued Invitation to Negotiate DMS-10/11-008 (“ITN”), on September 2, 2010, in order to select a company to provide such services; and

WHEREAS, pursuant to the ITN, the Department has awarded a contract to Service Provider based on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and the promises contained herein, the parties agree as follows:

### ***Contract 1.0 - DEFINITIONS***

The following terms when used herein shall have the following meanings:

**1.01 Active Unit or Line**

Means an active piece of wireless Product.

**1.02 Business Day**

Means Monday through Friday, excluding State observed holidays.

**1.03 Business Hours**

Means 9:00 A.M. to 5:00 P.M. EST on any Business Day at the office responsible for handling the pertinent interaction between Service Provider and the Department.

**1.04 Business Plans**

Means wireless service plans for business customers. Certain Business Plan options are priced in the Agreement or End User may select from any other available Business Plans, subject to the Customer’s written approval of the terms and pricing of that Business Plan.

**1.05 Corporate-Liable Active Unit or Customer Line**

Means an Active Unit (a) activated by End User for End User’s end use, (b) enrolled in a Business Plan, and (c) for which Department is financially liable.

**1.06 Department**

Means the Florida Department of Management Services, acting through its Division of Telecommunications (“DivTel”). The Department is the customer of record under this Agreement.

**1.07 End User(s)**

Means the individuals using the wireless telecommunications services set forth in Exhibit 1 – Technical Requirements.

- 1.08 Events of Default**  
Means (i) the failure of either party to pay any sum owed to the other hereunder at the time such amount comes due, (ii) the failure of either party to perform or observe any term, condition, or covenant to be performed by it under this Agreement, or (iii) an unauthorized assignment of this Agreement.
- 1.09 ITN**  
Means the Department's Invitation to Negotiate identified in the recitals above.
- 1.10 Location Based Service**  
Means any Service or application that uses, accesses, tracks or discloses the location of an active unit.
- 1.11 Nationwide Sprint Network**  
Means the Sprint-owned or controlled CDMA/1xrtt wireless network, including network owned or controlled by Sprint Service Provider affiliates, used by Sprint to provide Sprint Services.
- 1.12 Nextel National Network**  
Means the Sprint-owned or controlled iDEN wireless network, including network owned or controlled by Nextel affiliates or partners, used by Sprint to provide Nextel Services.
- 1.13 Nextel Services**  
Means wireless Services provided by Sprint on the Nextel National Network using iDEN technology.
- 1.14 Premium Services**  
Means approved downloads and applications available through wireless data Services that are above and beyond basic data usage.
- 1.15 Product(s)**  
Means product(s) includes equipment, hardware, software, cabling or other materials sold to Department by or through Service Provider as a separate item from, or bundled with, a Service.
- 1.16 Prohibited Data Uses**  
Means data services may not be used by a Wireless Data Connection Device in excess of that provided in the plans in Exhibit 3. For additional Prohibited Data Uses please see Section 10.
- 1.17 Roaming**  
Means voice or data service provided on another wireless carrier's network through agreements established by Service Provider.
- 1.18 Domestic Roaming**  
Means Roaming on networks within the United States, Puerto Rico and U.S. Virgin Islands where Service Provider has a roaming relationship with the carrier. Geographic Roaming locations are subject to change and provided at: <http://coverage.sprintpcs.com>
- 1.19 Service(s)**  
Means the services provided by Service Provider to the Department under this Agreement, including: (i) the wireless telecommunications services specified in Exhibit 1 (Technical Requirements), (ii) the operational services specified in Exhibit 2 (Business Process and

Operations), and (iii) such other services not specifically described in this Agreement but which are inherent in the provisioning of such services.

**1.20 Service Account**

Means the unique account through which services are offered and charges can be incurred (without regard to who pays). Service Accounts are often associated with a single user and have one-to-one relationships with Mobile Telephone Numbers, Electronic Serial Numbers, Subscriber Identity Modules, Mobile Identification Numbers and/or device serial number.

**1.21 Service Provider**

Means the wireless telecommunications company identified in the first paragraph of this Agreement.

**1.22 Sprint Networks**

Means Sprint Networks including the Nationwide Sprint Network, the Sprint 3G Network, and the Nextel National Network.

**1.23 Sprint 3G Network**

Means the Sprint-owned or controlled CDMA/EV-DO wireless network, including network owned or controlled by Sprint Service Provider affiliates, used by Service Provider to provide Sprint Services.

**1.24 Sprint 4G Network**

Means the wideband OFDM technology, including WiMax, that Service Provider owns or resells, including network components owned or controlled by Service Provider affiliates or partners.

**1.25 Sprint 4G Services**

Means functionality provided by Service Provider that either provides data transport on the Sprint 4G Network or allows for the use of Applications related to the Sprint 4G Network.

**1.26 Sprint Services**

Means wireless Services provided by Service Provider and authorized Sprint Service Provider Affiliates on the Nationwide Sprint Network or Sprint 3G Network using CDMA technology.

**1.27 Sprint Service Provider Affiliate**

Means an entity that has entered into an arrangement with Service Provider to construct wireless network coverage, perform operational functions in defined geographic areas, and provide mobile wireless telecommunications products and services under the "Sprint" service marks or any other service marks subsequently used by Service Provider. "Sprint Service Provider Affiliate Market" means the regions of the United States covered by Sprint Service Provider Affiliates.

**1.28 State**

Means the State of Florida.

**1.29 SUNCOM Client(s)**

Means the entity or entities acquiring the wireless telecommunications services set forth in Exhibit 1 from the Department. SUNCOM Clients may include State agencies, the legislative and judicial branches, political subdivisions, counties, cities, municipalities, local school boards, community colleges, universities, educational institutions, certain private non-profit K-12 schools, libraries, qualified commissions and boards, water management districts, certain qualifying non-profit corporations, and other qualifying public agencies or authorities.

**1.30 Wireless Data Connection Device**

Means a mobile broadband card, USB modem, embedded modem, or a phone subscribed to a phone as modem Business Plan.

**1.31 Wireless Data Session**

Means a Sprint Network connection attempt made by a user that utilizes wireless data services and is based upon the assignment of a dedicated IP address to the requesting access terminal (e.g., the handset, aircard, or other device). A Wireless Data Session begins when the user initiates a Sprint Network connection by attempting to access the Sprint Network and ends when the connection is blocked or terminated.

**1.32 Wireless Services**

Means Nextel Services, Sprint Services, and Sprint 4G Services.

***Contract 2.0 - TERM OF AGREEMENT***

**2.01 Initial Term**

The initial term of this Agreement shall commence on the Effective Date. As such this Agreement will expire five (5) years after the Effective Date , unless sooner terminated in accordance with the provisions herein.

**2.02 Renewal Term**

Upon mutual agreement, the parties may renew the Agreement, in whole or in part, for renewal terms up to five (5) years. . Each renewal shall specify the renewal price as set forth in the ITN response as reflected in Section 4 below. Each renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

**2.03 Termination By the Department for Convenience**

The Department may terminate this Agreement for convenience upon one hundred eighty (180) days advance written notice to Service Provider when the Department determines in its sole discretion that it is in the State's interest to do so. In the event of a termination for convenience, Service Provider shall not be entitled to recover any cancellation charges or lost profits.

**2.04 Termination By Service Provider for Unforeseen Circumstances**

The Service Provider may deem it necessary from time to time to change or update certain procedures set forth in this Agreement in order to account for unforeseen circumstances or to more efficiently conduct its business. If the Department unreasonably rejects such change or update, then Service Provider may terminate this Agreement upon one hundred eighty (180) days' prior written notice. In the event of a termination for unforeseen circumstances, Service Provider shall not be entitled to recover any cancellation charges or lost profits.

**2.05 Termination for Cause**

This Agreement may be terminated upon an Event of Default by either party if such Event of Default is not cured by the defaulting party within thirty (30) days of receipt of written notice of the Event of Default. The non-defaulting party shall have the immediate right, without further notice or proceedings, to pursue such remedies and other actions as that party may deem appropriate.

## 2.06 Transition

Service Provider will have a period of eight (8) months from the Effective Date of this Agreement, in accordance with Section 5.02 of the ITN, to complete all transition activities for state agencies as described in **Exhibit 2**, Business Process & Operations, and to commence providing the services as specified herein (the “Transition Period”). Service Provider will make commercially reasonable efforts to transition all SUNCOM Clients and local government agencies currently purchasing under Alternative Source Contract No.: 1523-ACS within the Transition Period. The parties acknowledge that the SUNCOM Clients and local government agencies may not be transition by the end of the Transition Period.

It is the desire of the parties that, **for only the Transition Period**, the operational terms and conditions contained in the earlier agreements between the parties for Wireless Data Services, Contract No.: DMS-0304-063 (MA4440) and Alternative Source Contract No.: 1523-ACS, will apply to this Agreement. Those operations terms and conditions are hereby incorporated into this Agreement as **Exhibit 6**.

Upon any termination of this Agreement, Service Provider shall cooperate and use reasonable efforts to (i) assist the Department and SUNCOM Clients to minimize any impacts resulting from the termination and any transition to a new vendor; and (ii) offer the Services directly to any SUNCOM Client or End User who meets Service Provider’s credit requirements and who enters into a contract for service with Service Provider.

## 2.07 Contract Documents

This Agreement, together with the following documents, set forth the entire understanding of the parties with respect to the subject matter. In case of conflict, the terms of the Agreement shall control. If a conflict exists among any of these documents, the documents shall have priority in the order listed:

- A. Any Amendments to the Agreement.
- B. Agreement and **Exhibits 1 - 7**.
- C. ITN No.: DMS-10/11-008, as amended.

## ***Contract 3.0- PROVISION OF SERVICE***

### 3.01 Generally

Service Provider agrees to provide the Services in accordance with the specifications and requirements set forth in this Agreement.

### 3.02 Reporting Requirements

Service Provider shall provide monitoring tools with reporting functionality, if available, to the Department which monitors the defined SLA service parameters in accordance with **Exhibit 5**.

The reports referenced in **Exhibit 1**, **Exhibit 2**, and **Exhibit 5** (SLA Matrix) shall be provided by the Service Provider. The Service Provider shall submit reports in electronic format to the Department. The reports shall be due within a timeframe mutually agreed upon between the parties or no later than 30 days following the request from the Department. Any additional ad hoc reports requested by the Department shall be provided by the Service Provider upon mutual agreement of the format and within a timeframe mutually agreed upon between the parties. If

these reports are not submitted in a timely manner, the Department shall seek any remedies it may have under Section 14.

**3.03 Discounts.**

See **Exhibit 7** for details regarding discounts available to SUNCOM Clients and employees. Other terms and conditions of this Agreement do not apply to **Exhibit 7**.

**3.04 Customer Care Services**

Service Provider's enterprise customer care help desk resources shall be available to End Users and SUNCOM Clients for resolution of most Service-related issues. In addition, the Department and SUNCOM Clients will have access to a help desk as set forth in Section 6 below.

**3.05 No Privity With End Users or SUNCOM Clients**

Unless otherwise provided in this Agreement, Service Provider shall not be contractually obligated to the End Users or SUNCOM Clients for the Service and shall not be authorized to send any bills for the Service to such End Users or SUNCOM Clients.

**3.06 Right to Deactivation of Unused Accounts**

The parties will cooperate to ensure that End User accounts do not lie dormant for extended periods of time (six months or more). Service Provider shall not deactivate such accounts until the Department has been given at least sixty (60) days to investigate and notify the SUNCOM Client. If circumstances warrant, the Department may require Service Provider to postpone the planned deactivation for some identified period of time.

**3.07 Location Based Services**

If End User downloads or accesses Location Based Services through Service Provider wireless Products and Services, Customer agrees that the Location Based Service provider may access, use and disclose as necessary the geographic location of End User's Product(s) pursuant to the terms of the Location Based Service purchased by Customer. Customer must clearly, conspicuously and regularly notify all of its End Users using Corporate-Liable Active Units upon which End User has enabled Location Based Services that end-user location information may be accessed, used or disclosed in connection with the Location Based Service. ONLY TO THE EXTENT ALLOWED BY LAW, CUSTOMER WILL RELEASE SERVICE PROVIDER FROM ANY AND ALL THIRD PARTY CLAIMS, LOSSES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF END USER'S USE OF LOCATION BASED SERVICES AND CUSTOMER'S FAILURE TO NOTIFY CORPORATE-LIABLE END USERS OF END USER'S ELECTION TO USE ANY LOCATION BASED SERVICE OR LOCATION INFORMATION ON CORPORATE-LIABLE ACTIVE UNITS. Location Based Services are not available on the Sprint 4G Network.

**3.08 Premium Services Policies**

In certain instances, subject to the terms of the content purchased, Service Provider may delete Premium and non-Premium items downloaded to storage areas controlled by Service Provider.

**3.09 Telephone Numbers and Portability**

Service Provider may change the telephone number assigned to each Corporate-Liable Active Unit with reasonable prior notice for commercial reasons, such as fraud prevention, regulatory requirements and area code changes. Customer does not have any right of possession or title to any number, e-mail address or other identifier Service Provider may assign to Customer's wireless Products or accounts. End User may not modify, change or transfer any of these identifiers except as Service Provider allows or as allowed for by law. Service Provider will

comply with any FCC-issued regulations that require Service Provider to allow End User to “port” or transfer its assigned telephone numbers upon switching wireless service to another carrier. Before a telephone number previously used with another carrier can be used on the Sprint Networks, End User must provide information about the account with the other carrier, such as the account number, tax identification number, telephone number, 5 digit zip code and password, if applicable, and purchase wireless Products from Service Provider. Until the port from the previous carrier is successful, the Service Provider wireless Product will only be able to call 911 and Sprint Customer Care. Once the port is completed, End User’s old device will no longer work. However, due to system limitations and issues outside Service Provider’s control, some requests to port a telephone number from another carrier to Service Provider, or from Service Provider to another carrier, may not be successful. If a transfer to Service Provider is not successful, the End User may return any Service Provider wireless Products within the return period to receive a credit, and Customer will lose or repay to Service Provider any discounts or service credits provided with a returned Service Provider wireless Product or cancelled Nextel Service or Sprint Service. If End User does not return Service Provider wireless Products within the return period as defined in **Exhibit 2**, Section 2.2 of the Wireless Product Annex, the Department shall be responsible for the suggested retail price of the Product.

**3.10 TTY Access**

TTY-capable wireless Products (also known as TDD or Text Telephone) may not function effectively when attempting 911 calls due to the limitations of the answering agency.

**3.11 911 or Other Emergency Calls**

For 911 calls, an emergency responder’s ability to locate End User through wireless Products and Services may be affected by various factors, including but not limited to, the type of wireless Product used, lack of a GPS-enabled device, geography or other factors such as the porting process. In some areas and depending on the equipment deployed by the local public safety answering point (“PSAP”), 911 calls may be routed to a state patrol dispatcher instead of the local PSAP. Pursuant to Section 365.172(11) of the Florida Statutes, Service Provider is not liable for failures or delays in connecting to the appropriate emergency services provider. Enhanced 911 (“E911”) service that is compatible with FCC technical requirements is not available in all areas due to PSAP equipment capabilities. Customer consents to Service Provider’s disclosure of Customer information to governmental and public safety authorities in response to emergencies. This information may include, but is not limited to, Customer’s name, address, number, and the location of the user of the Service at the time of call. Service Provider’s equipment and services must allow End Users in Florida to dial \*347 (Florida Highway Patrol) at no charge.

**3.12 Use of Sprint Wireless Data Services**

Customer acknowledges that use of certain wireless data Services, including some messaging services, may result in the disclosure to third parties of the user’s email address and other information in connection with the user’s Internet usage. As a result, End User may receive advertising, warnings, alerts and other messages, including broadcast messages. Service Provider does not disclose such user information to third parties. Such information is collected by the third parties based upon the End User’s data usage.

**3.13 Operational and User Guides**

As provided in **Exhibit 5**, the parties agree to begin developing an operational guide within 90 days after contract execution. The parties will mutually agree on the content of the operational guide. The Department is responsible for developing the user guide using information derived from the operational guide. The Service Provider agrees to cooperate with the Department to



develop content for the user guides. The Service Provider shall be permitted to review and provide comment to the user guide prior to submission to the End Users.

**3.14 Compatibility of Wireless Products and Services**

Wireless Products may not be compatible with services provided by other wireless carriers, except for services provided over Sprint Service Provider Affiliate networks or in connection with Roaming agreements. Service Provider does not guarantee current or future compatibility of wireless Products or Services with third party products or Applications. Apparent compatibility or notice from Service Provider of compatibility is not a Service Provider endorsement of a third party product or Application. Unless otherwise stated in the Agreement, Sprint may, in its sole discretion and at any time, disable or discontinue use of any third party product or Application with the wireless Products or Services.

***Contract 4.0- PRICING***

**4.01 Rates**

The full and complete prices for the Services are set forth on **Exhibit 3**, attached hereto. Service Provider may modify terms and features of a nationally available wireless Business Plan that are not set forth in **Exhibit 3** without written notice to Customer.

**4.02 Rate Increases**

The rates set forth on **Exhibit 3** may not increase prior to January 1, 2014. Beginning January 1, 2014, Service Provider may increase the pricing subject to the following limitations: (i) the Department must be given at least one hundred eighty (180) days advance written notice of the exact amount of the price increase; (ii) no more than one price increase may be made in any twelve (12) month period; and (iii) the price increase may not exceed the most recent annual percentage increase in Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, All Items, South Region (using the most recent twelve months of Labor Department statistics available at the time the notice was given). No retroactive price increases are allowed.

**4.03 International Dialing Charges**

Unless otherwise instructed by the Department, End Users shall not have the ability to make any calls that will result in international long distance charges. If international calling is enabled, Service Provider may reasonably restrict availability and may charge the Department at Service Provider's standard international long distance rates.

**4.04 Metering of Voice Usage**

The length of calls is generally measured from the time the End User presses the "SEND" key and ends when the phone device disconnects from Service Provider's facilities or when the End User presses the "END" key if sooner. There is no call usage for outgoing voice calls that reach a busy signal, a disconnected number or that ring continuously without making connection to the Sprint Networks. There is no call usage for incoming voice calls that End User does not answer or that enter End User's voicemail.

**4.04.1 Nextel Direct Connect Transmissions.**

A Nextel Direct Connect transmission begins approximately when End User presses the button to initiate a transmission and ends approximately 6 seconds after completion of a communication (i.e., when End User or another participant releases the button) to which no participant responds within 6 seconds. If a participant responds within 6 seconds, the response is calculated as part of the initial transmission. End User initiates a new

transmission if End User responds more than 6 seconds after another participant completes a communication. Airtime charges apply for the entire period of time the transmission is connected to the Sprint Networks. Service Provider will charge a minimum of 6 seconds for all Nextel Direct Connect transmissions. After 6 seconds, Nextel Direct Connect airtime on a Sprint Product is rounded up to the next second for each transmission.

**4.05 Metering of Data Usage**

Data usage is calculated from the time End User's device makes contact with the Sprint Networks or Sprint 4G Network until the respective network connection is broken or dropped, whether or not the transmission of data is a complete end to end transaction. Data usage may occur on any device capable of data transmission, including handheld devices and devices attached to or embedded in computers and includes sending and receiving e-mail, browsing the Internet, accessing certain applications, all complete, partial or interrupted uploads or downloads and re-sent data, and unsuccessful attempts to reach websites and other applications and Services, including those resulting from dropped network connections. Data usage is rounded up to the next whole kilobyte. Rounding occurs at the end of each separate session. Rounding of data usage charges occurs at the end of each billing period and the total kilobyte charges are rounded up to the next cent. Additional information on the metering of Data Usage is included in **Exhibit 2**.

**4.06 Minimum Monthly Fee (MMF)**

Every SUNCOM Client's Service Account will incur a minimum monthly charge (as set in **Exhibit 3 - Price**) unless the Service Account's utilization cost exceeds the Minimum Monthly Fee's amount.

**4.07 Roaming Charges**

In-state and out of state voice rates may be set out in End User's pricing attachment in **Exhibit 3**. Domestic Roaming for data is included in Service Provider Business Plans. International Roaming rates for voice and data will vary and are accessible through [www.sprint.com/international](http://www.sprint.com/international) or by contacting End User's Service Provider Account Representative. There may be delays in invoicing Roaming charges due to the practices of the Roaming service provider. Business Plans that include Roaming ("Roaming Included Plans") are not available with single-band phones or to users who reside or whose primary use is outside an area covered by the Nationwide Sprint Network. Service Provider may limit or terminate Service if a Corporate-Liable Active Unit user moves outside of the area covered by the Nationwide Sprint Network. Service Provider may, deny, terminate, modify, disconnect or suspend Service to a Corporate-Liable Active Unit if Roaming in a given month exceeds: (1) voice: 800 minutes or a majority of minutes, or (2) data: 300 megabytes or a majority of kilobytes. International calling, including in Canada, Mexico, and Guam, is not included in Roaming Included Plans. Prior to an adverse action being taken against an End User, Service Provider shall notify the Department by providing thirty (30) days prior written notification of any alleged infraction by an End User of the Services.

**4.08 Special Services**

As set forth in **Exhibit 3**, End User also may incur charges for special Services such as directory assistance, operator-assisted calls or call-forwarding, depending on End User's Business Plan.

**4.09 Reactivation Fee**

If Service Provider terminates Service to a Corporate-Liable Active Unit as permitted under the Agreement or requested by End User, Service Provider may require payment of any outstanding account balance before Service Provider reactivates Service to the affected Active Unit and Sprint

may charge Department a reactivation charge. If Department is charged a reactivation fee on a Corporate-Liable Active Unit, Service Provider agrees to waive the reactivation fee through the application of a local market discretionary credit applied to the Department's invoice.

**4.10 Monthly Recurring Charges**

Service Provider will bill Department for Wireless Services based on the Monthly Recurring Charges ("MRC") for the selected Business Plan. Customer will incur overage charges if the minutes or megabytes used exceed the minutes or megabytes allowed under the selected Business Plan.

***Contract 5.0 - EQUIPMENT***

**5.01 Responsibility for Obtaining Equipment**

SUNCOM Clients and End Users shall be responsible for obtaining the equipment necessary to use the Services from Service Provider or third parties. The Department may impose reasonable policies respecting such equipment.

**5.02 Network Compatibility**

The parties will cooperate to ensure that any equipment used by End Users in connection with Service meets industry standards and any other reasonable requirements of Service Provider. Service Provider may deactivate service to any equipment used by an End User that does not meet such requirements or which is otherwise causing network interference. To the extent practicable, Service Provider will advise the Department and the SUNCOM Clients in advance of such deactivations.

**5.03 Equipment Sales by Service Provider**

Pursuant to this Agreement, Service Provider agrees to offer equipment (including accessories) to SUNCOM Clients on the following basis:

- (i) Comparable Terms and Prices: The equipment models, standard prices and standard terms of sale shall be comparable to those offered to Service Provider's largest customers in Florida. Service Provider will offer highly competitive pricing and discounts for its services in a manner in which the prices Service Provider charges its customers for the same services are not unreasonably dissimilar for similarly situated customers with like traffic patterns, volumes, commitment levels and the like. However, this section shall not in any way be construed as providing the Department most favored customer pricing as it is against Service Provider's corporate policy as a common carrier. Service Provider is prohibited by law from unreasonably discriminating between similarly situated customers.
- (ii) Minimum Discounts: Pricing shall reflect, at a minimum, the discounts set forth on **Exhibit 3** (Pricing for Equipment).
- (iii) Promotions: Service Provider may offer equipment sales promotions to SUNCOM Clients with the Department's consent. If requested, the Department may (but is not required to) assist in publishing these promotions. If the Department purchases a promotional wireless Product or Service, the promotional terms will control over any conflicting terms in the Agreement for that wireless Product or Service until the promotion expires or Customer selects a different Business Plan for the Corporate-Liable Active Unit enrolled in the promotion.

- (iv) Ordering Process: Service Provider may require SUNCOM Clients to follow reasonable procedures for ordering, receiving and paying for the equipment (e.g., a requirement that all orders be placed through a designated account executive or toll-free number) in accordance with **Exhibit 2**. Service Provider will not receive orders directly from an End User.
- (v) Warranties: Service Provider agrees to pass through to SUNCOM Clients any and all Equipment vendor warranties (including battery) to the fullest extent allowed under applicable law. Service Provider does not manufacture Products and, except as provided in this Agreement, is not responsible for the acts or omissions of the original equipment manufacturer.
- (vi) Americans with Disabilities Act: Service Provider shall identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
- (vii) Title to Equipment. Excluding equipment sold to Customer under this Agreement Service Provider or its suppliers retain title and property rights to Service Provider-provided equipment. Upon termination or expiration of the Agreement or the applicable Service, Customer will surrender and immediately return the Service Provider-provided software to Service Provider; provided that Customer is not required to return the software installed in Products sold to Customer under this Agreement.
- (viii) U.S. Export Control: The Department is solely responsible for complying with U.S. Export Control laws and regulations and the import laws and regulations of foreign countries when End Users are traveling internationally with the Department's Equipment.

#### **5.04 Equipment Lists and Catalogs**

The parties will cooperate in updating the equipment lists and catalogs set forth in Service Provider's response to the ITN. These updated lists and catalogs (with applicable pricing) shall be made available for viewing and ordering by SUNCOM Clients in accordance with **Exhibit 2 – Business Process and Operation**. Service Provider shall provide the Department with reasonable advanced notice (i.e. prior to the effective date) of any equipment included in the lists and catalogs which will be discontinued.

#### **5.05 Licensing Requirements**

Where software is provided with a Product or Service, Customer is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable Customer to use the Products and Services in accordance with the applicable licensing requirements. Software licensing terms and conditions of Service Provider's software vendors are provided by Service Provider or posted at [www.sprint.com/ratesandconditions](http://www.sprint.com/ratesandconditions) or otherwise provided to Customer through click or shrinkwrap agreements. Service Provider may suspend, block or terminate Customer's use of any software if Customer fails to comply with any applicable licensing requirement.

## ***Contract 6.0- BUSINESS PROCESS AND OPERATIONS***

### **6.01 Generally**

The initial business processes and operational requirements applicable to this Agreement are set forth on **Exhibit 2 - Business Process and Operation**. The parties shall cooperate to make reasonable clarifications, modifications, additions or deletions to these requirements from time to time based on changing circumstances and/or the desire for better efficiencies. By the end of the Development and Preparation Phase contemplated in **Exhibit 2 – Business Process and Operation**, the parties will organize and set forth the requirements in a comprehensive Operational Guide which each party will follow in good faith. Changes in the Operational Guide may be accomplished and implemented by mutual agreement without a formal amendment to the Agreement.

### **6.02 Weekly Conference Calls**

Service Provider shall participate in a weekly conference call with the Department to discuss and provide status on all open or unresolved issues related to the Services (including trouble tickets). It shall be the responsibility of Service Provider to coordinate and initiate the call at a time acceptable to the Department's staff. At the Department's discretion, the call frequency may be modified.

### **6.03 Helpdesk**

Service Provider shall assist the Department with the integration of the Helpdesk with the Department's Service Desk, Service Desk Express application and/or other existing DivTel helpdesk system(s). Additional information for Helpdesk information is provided in **Exhibit 1 – Technical Specifications**.

### **6.04 Technology Information**

In the normal course of technology evolution and enhancement, Service Provider continually updates and upgrades its Networks, Products and Services. In some instances, these efforts will result in the need to ultimately replace certain offerings or technologies. In such event, Service Provider will undertake such replacement efforts in a customer-focused and commercially reasonable manner and will, throughout the process, provide its customers with periodic updates that provide relevant information.

As part of such technology evolution, Service Provider must reserve the right to migrate Customer from Products activated on the Nextel National Network to either a Sprint Direct Connect push-to-talk ("PTT") Product, or a Customer-selected non-PTT Product, that runs on the Nationwide Sprint Network; provided that Service Provider will not undertake any such migration with less than 12 months prior notice. Because there will be at least 12 months prior notice, in almost every instance Customer will have the ability to upgrade its existing devices to new or replacement devices under the then applicable Service Provider handset upgrade program. If the Customer has any devices that are not eligible for upgrade under this handset upgrade program and the Customer must migrate its existing Products activated on the Nextel National Network, Service Provider will permit the parties current upgrade policy to apply to such existing Products and permit the Customer to upgrade at the then existing upgrade costs to devices that are compatible with the replacement technologies. If Service Provider exercises its right to migrate Customer to a new technology under this provision, upon completion of such migration, the terms and provisions of this Agreement related solely to the Nextel products and service will terminate. In addition, the parties recognize that they may need to amend this Agreement to add new terms related to such successor technologies.

**6.05 Authorized Representatives**

Immediately upon execution of this Agreement, Service Provider shall notify the Department of its authorized representatives for purposes of giving and receiving the notices provided for under this Section 6 and any other Service orders, including those which involve the activation, change, or discontinuance of Service.

The Department's authorized representatives are as follows:

**A. Contract Administrator**

The employee primarily responsible for administrative duties relating to the Agreement, such as maintaining the Contract file and financial information on this Agreement, and will serve as the liaison with the Service Provider's Contract Manager and Department.

Christina Espinosa, FCCN, FCCM  
Purchasing Analyst  
Departmental Purchasing  
Florida Department of Management Services  
4050 Esplanade Way, Suite 380.9z  
Telephone: (850) 410-2404

The Department may appoint a different Contract Administrator, Contract Manager and/or SUNCOM Product Manager without an amendment to the Agreement, by sending written notice to Service Provider.

**B. Contract Manager**

The employee primarily responsible for overseeing each party's performance under to the terms of this Agreement. Any communication from the Service Provider to the Department relating to the Agreement shall be copied to the Contract Manager.

Jonathan Rakestraw  
Division of Telecommunications  
Department of Management Services  
4030 Esplanade Way, Suite 115  
Tallahassee, Florida 32399-0950  
Telephone: (850) 921- 0857 / Fax: (850) 921- 5162  
E-mail: [jonathan.rakestraw@dms.myflorida.com](mailto:jonathan.rakestraw@dms.myflorida.com)

**C. SUNCOM Product Manager**

The employee primarily responsible for overseeing the technical requirements for this Agreement.

Raghib Qureshi  
Division of Telecommunications  
Department of Management Services  
4030 Esplanade Way, Suite 125J  
Tallahassee, Florida 32399-0950  
Telephone: (850) 413-0319  
E-mail: [raghib.qureshi@dms.myflorida.com](mailto:raghib.qureshi@dms.myflorida.com)

## ***Contract 7.0- TERMS OF PAYMENT***

### **7.01 Invoicing of Charges**

Invoicing shall comply with the terms and conditions set forth in **Exhibit 2 – Business Process and Operation** attached to this Agreement.

### **7.02 Payment of Charges**

Payment shall be made in accordance with State law, including Sections 215.422 and 287.0585, Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to Service Provider due to preparation errors will result in a delay in payment. The Department is solely responsible for all charges billed under this Agreement, whether or not a SUNCOM Client has paid the Department for such charges.

### **7.03 Transaction Fee**

The State has instituted MyFloridaMarketPlace, a statewide eProcurement System (“System”). Pursuant to Section 287.057(23), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which Service Provider shall pay to the State, unless exempt pursuant to Rule 60A-1.032, F.A.C. The parties agree that taxes and surcharges shall not be assessed in the calculation for the Transaction Fee.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to Service Provider. If automatic deduction is not possible, Service Provider shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Service Provider certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Service Provider shall receive a credit for any Transaction Fee paid by Service Provider for the purchase of any item(s) if such item(s) are returned to Service Provider through no fault, act, or omission of Service Provider. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to Service Provider’s failure to perform or comply with specifications or requirements of the Agreement.

Failure to comply with these requirements shall constitute grounds for declaring Service Provider in default and recovering re-procurement costs from Service Provider in addition to all outstanding fees. SERVICE PROVIDERS DELINQUENT IN PAYING TRANSACTION FEES MAY BE subject to being removed from the Department’s vendor list as provided in rule 60A-1.006, F.A.C.

### **7.04 Taxes**

Service Provider will recognize and honor all validly and properly issued and executed tax exemption certificates delivered by Customer and statutory exemptions and will not bill Customer for any such exempted taxes. Service Provider’s rates and charges for Products and Services do not include taxes. Customer will pay any and all taxes for which it does not have an exemption.

The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Agreement are provided in **Exhibit 3** and as updated in the catalog.

These fees may appear on billings to the Customer. No other FCC or PUC fee, cost recovery fee, surcharge or assessment applicable to wireline and/or wireless voice and/or data telecommunications services may be imposed during the term of this Agreement, without the prior amendment under the Agreement, unless mandated by the FCC or PUC. Service Provider agrees to not bill for any items which are not mandated by the FCC or PUC and which are

otherwise not applicable to wireline and/or wireless voice and/or data telecommunications services.

**7.05 Disputed Charges**

Disputed charges shall be handled in the manner set forth in **Exhibit 2 – Business Process and Operation** attached to this Agreement and subject to Section 215.422, Florida Statutes.

**7.06 Proration of Charges**

Monthly fees for billing periods of less than one month will be prorated based on the actual number of days in such periods.

**7.07 Charges Resulting from Lost or Stolen Devices**

In the event an End User's or SUNCOM Client's voice or data transmitting device ("Device") is lost, stolen, or otherwise absent from the End User's or SUNCOM Client's possession or control, the Department shall nevertheless be liable for all charges attributable to the Device until it or the End User or SUNCOM Client notifies Service Provider during Business Hours of such loss, theft, or unauthorized absence, in which case the Department's liability therefore shall terminate at the earlier of (i) deactivation of the Device by Service Provider, or (ii) the end of four (4) Business Hours after such notification is received by Service Provider. Service Provider shall use reasonable efforts, taking into account all circumstances which shall include other operational demands placed upon its employees, to deactivate Service to the Device affected as soon as practicable.

**7.08 Right of Offset**

Following prior written notification and completion of the dispute process outlined in Section 14, the Department may, in addition to other remedies available at law or equity and upon notice to Service Provider, retain from amounts due Service Provider such monies as may be necessary to satisfy any claim arising under (i) this Agreement, or (ii) any other liability or obligation of Service Provider or its affiliates to the State of Florida.

***Contract 8.0 - THE DEPARTMENT'S OBLIGATIONS***

**8.01 Trained Staff**

The Department shall provide an adequate and properly trained staff to receive and investigate any complaints from its End Users or SUNCOM Clients relating to Service, and will report any trouble to Service Provider with respect to Service only upon reasonable verification that such trouble is due to reasons other than the misuse or malfunctioning of the End User's or SUNCOM Client's equipment or the failure of such equipment to meet the technical standards for compatibility with Service.

**8.02 Responsibility for Actions or Omissions**

The Department shall be solely responsible for all costs and expenses incurred in connection with its actions or omissions in the sale of Service or otherwise relating to this Agreement. The Department shall act in all respects on its own account, and shall be solely responsible for such things as billing, collection and, except as provided in Section 11 and **Exhibit 1 – Technical Requirements**, abuse or fraudulent use of any element of the Service, whether by the Department's employees or agents of the Department, an End User or a SUNCOM Client, or any third party (excepting only actions by Service Provider, Service Provider's agent or Service Provider's employees), provided Service Provider has followed the Department's instructions under this Agreement with respect to such use.



**8.03 Responsibility for Agents**

The Department is responsible for the performance of its agents, if any, and shall ensure that its agents are in compliance with any applicable terms of this Agreement and any other applicable industry standards, rules and regulations.

**8.04 No Rights to Service Provider's Facilities or Intellectual Property**

No provision of this Agreement shall be construed as vesting in the Department any control, ownership or rights in any facilities, operations or intellectual property of Service Provider.

**8.05 Notice to End Users and SUNCOM Clients**

The parties will cooperate in advising each End User and SUNCOM Client of the following:

- (i) The availability of the Service is not assured at all times or places;
- (ii) The privacy of the Service is not assured at all times or places;
- (iii) End Users and SUNCOM Clients have no contractual relationship with Service Provider with respect to the Service; and
- (iv) Any liability Service Provider might have to an End User or a SUNCOM Client for the Service shall not exceed the liability Service Provider would have if the End User or SUNCOM Client was a direct customer of Service Provider and had agreed to Service Provider's standard terms and conditions.

The above notice requirements may be satisfied by a reasonably placed posting on the Department's SUNCOM website.

**8.06 Protection of Service Provider Marks**

The Department recognizes the right, title, and/or interest of Service Provider (through ownership or license) to all service marks, trademarks, and trade names owned by or used by Service Provider (the "Marks"). The Department agrees not to, directly or indirectly, contest or otherwise impair such right, title, and interest of Service Provider. The Department has no rights, and shall not acquire any right, title or claim to the Marks, shall not use any Marks, and shall not use Service Provider or any trademarks or trade names of Service Provider, directly or indirectly, without the prior written consent of Service Provider.

**8.07 Acceptable Use Policy**

If Customer purchases Products or Services, Customer must conform to the acceptable use policy posted at <http://www.sprint.com/legal/agreement.html>, as reasonably amended from time to time by Service Provider. Service Provider will provide a copy of the acceptable use policy to the Department every six months

***Contract 9.0 - SERVICE PROVIDER'S OBLIGATIONS***

**9.01 Notice of Material Changes in Service**

Service Provider agrees to provide timely and reasonably detailed notice to the Department (based on circumstances present) of any material changes in Service of either a permanent or temporary nature. Service offerings are defined in **Exhibit 1**.

## **9.02 Planned outages**

The Service Provider (over the wireless network) shall send notifications which informs the end customer of the anticipated outage including date, time, and duration. Customer notification is sent via the Enterprise Notification System (ENS) for planned and unplanned downtime on the Sprint Network. Additional information for outages shall be provided in **Exhibit 5**.

### **9.02.1 Unforeseen Outages**

Additional information for unforeseen outages shall be provided in **Exhibit 5 – Service Level Agreement Matrix**.

## **9.03 Department Test Accounts**

Service Provider shall furnish up to ten (10) voice and up to ten (10) data (including equipment, voice airtime, and data transmit) wireless devices for use by the Department as test accounts. The test accounts shall be used to perform evaluation testing for the life of the awarded contract. The test accounts and devices shall be furnished at no cost.

## **9.04 SUNCOM Client Testing and Evaluation**

Prior to making their initial order for Service, SUNCOM Clients shall be permitted to obtain wireless demonstration equipment (including airtime) for the purposes of testing and evaluation at no additional cost. The demonstration equipment shall be made available for a period of thirty (30) working days. Additional information is provided in **Exhibit 1 – Technical Requirements**.

## **9.05 Security and Confidentiality**

- A.** The Service Provider shall comply fully with all security procedures, laws and regulations of the United States, State and the Department in performance of the Agreement.
- B.** The Service Provider (and any person or entity obtaining information through Service Provider) shall not divulge to any unauthorized third parties any confidential information obtained by Service Provider or its agents, subcontractors or employees in the course of performing the Services. Such confidential information shall include but not be limited to, End User phone numbers, usage records, location information and other forms of identification of End User, security procedures, business operations information, or commercial proprietary information of the State, the Department, a SUNCOM Client or an End User. The Service Provider shall not be required to keep confidential any information or material that is publicly available through no fault of Service Provider, material that Service Provider developed independently without relying on the State's or SUNCOM Client's confidential information, or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, Service Provider shall take appropriate steps as to its personnel, agents, and subcontractors. The terms of this paragraph shall survive the termination of this Agreement.
- C.** Privacy Policy. Sprint's privacy policy, as amended from time to time, is available at [www.sprint.com/legal/privacy.html](http://www.sprint.com/legal/privacy.html). The privacy policy includes information about Sprint's customer information practices and applies to the provisioning of the Products and Services.

## **9.06 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)**

Section 946.515(2), Florida Statutes, requires the following statement to be included in this Agreement: "It is expressly understood and agreed that any articles which are the subject of, or

required to carry out, the Agreement shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Agreement the person, firm, or other business entity carrying out the provisions of the Agreement shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

**9.07 Products Available from the Blind or Other Handicapped. Section 413.036(3), Florida Statutes**

Section 413.036(3), Florida Statutes, requires the following statement to be included in this Agreement: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

**9.08 E-Verify Employment Eligibility Verification**

Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Service Provider is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by Service Provider during the contract term. Also, Service Provider shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.

**9.09 Scrutinized Companies Lists**

In executing this Agreement, Service Provider certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, Service Provider agrees the Department may immediately terminate this Agreement for cause if the Service Provider is found to have submitted a false certification or if Service Provider is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Agreement.

***Contract 10.0 - ABUSIVE OR FRAUDULENT USE OF THE SERVICES***

**10.01 Fraud**

If Service Provider reasonably suspects that any Service is being abused or used for fraudulent purposes, Service Provider reserves the right to hotline, suspend, or terminate such Service to the End User immediately ("Fraud Intervention Measure(s)"). Charges associated with fraud activity for which the Department has been confirmed as having no culpability will be credited. The credit may take more than one billing cycle to apply. Service Provider shall use reasonable efforts during Business Hours to provide advance notice of Fraud Intervention Measures.

**10.02 Minimize Abuse**

The Department agrees to (i) make good faith efforts to minimize abuse or fraudulent use, (ii) promptly report any suspected abuse or fraudulent use to Service Provider, and (iii) cooperate in any investigation or prosecution initiated by Service Provider. Service Provider may require the Department to cancel the right to use Service by any of its End Users or SUNCOM Clients abusing or fraudulently marketing or using Service.

**10.03 Suspected Abuse or Fraudulent**

Service Provider shall make commercially reasonable efforts to give the Department notice of suspected abuse or fraudulent use prior to implementing a Fraud Intervention Measure.

**10.04 Fraudulent Use of Services**

If the Department at any time suspects that any Service may be, has been or is being used for abuse or fraudulent purposes, the Department shall be liable for all costs or charges incurred until four (4) Business Hours after the Department notifies Service Provider to terminate Service under Section 2.05.

**10.05 Prohibited Data Uses**

Prohibited Data Uses. Service Provider reserves the right, without notice or limitation, to limit throughput speeds or quantities or to deny, terminate, end, modify, disconnect, or suspend wireless Service if a wireless Product engages in prohibited voice or data uses provided in the User Guide and in the Operational Guide, which is updated from time to time. In Service Provider's sole discretion, Service Provider will determine the actions necessary to protect the Sprint Networks or Sprint 4G Network from harm or degradation.

**10.06 Interrupt or Terminate Service**

Upon notice to Department, Service Provider may interrupt or terminate Service if Service Provider determines that the End User's use of the Service infringes intellectual property rights.

***Contract 11.0 - NO WARRANTIES***

SERVICE PROVIDER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF WHATSOEVER NATURE RELATING TO THE SERVICE OR ANY EQUIPMENT PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

TO THE EXTENT SERVICE PROVIDER PROVIDES ACCESS TO INFORMATION PROVIDED BY OTHER SOURCES, SERVICE PROVIDER ACCEPTS NO LIABILITY FOR AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONTENT THEREOF.

***Contract 12.0 - LIMITATIONS OF LIABILITY***

SERVICE PROVIDER'S LIABILITY FOR DAMAGES OR COSTS ARISING FROM ERRORS, OUTAGES, OR FAILURES OF SERVICE, LACK OF SECURITY IN USE OF SERVICE, OR DEFECTS OR MALFUNCTIONS OF THE FACILITIES, OCCURRING IN THE COURSE OF PERFORMING UNDER THIS AGREEMENT, REGARDLESS OF THE

LEGAL BASIS FOR SUCH CLAIM, SHALL IN ANY EVENT BE LIMITED TO AN AMOUNT EQUAL TO THE PROPORTIONATE CHARGE TO THE DEPARTMENT FOR THE PERIOD OF SERVICE DURING WHICH SUCH ERRORS, OUTAGES, FAILURES, DEFECTS, OR MALFUNCTIONS OF EQUIPMENT OCCUR, SUBJECT TO THE ADDITIONAL LIMITATIONS BELOW. THE ABOVE LIMITATION DOES NOT INCLUDE ANY POTENTIAL LIABILITY FOR INTENTIONAL TORTS.

NO PARTY SHALL BE LIABLE TO ANOTHER FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST DATA OR RECORDS (EXCEPT TO THE EXTENT THE SERVICE PROVIDER IS REQUIRED TO BACK-UP DATA OR RECORDS), EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE. NO PARTY SHALL BE LIABLE FOR LOST PROFITS, LOST REVENUE, OR LOST INSTITUTIONAL OPERATING SAVINGS.

THE DEPARTMENT ACKNOWLEDGES THAT SERVICE IS MADE AVAILABLE TO EQUIPMENT ONLY WHEN THE EQUIPMENT IS WITHIN OPERATING RANGE OF THE FACILITIES LOCATED WITHIN THE WIRELESS SYSTEM. SERVICE MAY BE TEMPORARILY REFUSED, INTERRUPTED OR LIMITED FOR MANY REASONS. INDIVIDUAL CONNECTIONS MAY BE "DROPPED" (I.E., INVOLUNTARILY DISCONNECTED) FOR A VARIETY OF REASONS AS WELL. SERVICE PROVIDER SHALL INCUR NO LIABILITY FOR ITS INABILITY TO PROVIDE ADEQUATE SERVICES HEREUNDER IF SUCH INABILITY IS DUE TO THE LACK OF NETWORK COVERAGE, NETWORK CAPACITY, OR TO CAUSES BEYOND THE SERVICE PROVIDER'S REASONABLE CONTROL. NOR SHALL SERVICE PROVIDER BE RESPONSIBLE FOR ANY ACT OR OMISSION RELATED TO THIRD PARTY EQUIPMENT OR SYSTEMS USED IN CONNECTION WITH THE SERVICE.

WIRELESS SYSTEMS USE RADIO CHANNELS TO TRANSMIT VOICE AND DATA COMMUNICATIONS OVER A COMPLEX NETWORK, AND PRIVACY CANNOT BE GUARANTEED. SO LONG AS THE SERVICE PROVIDER HAS TAKEN REASONABLE PRECAUTIONS AND COMPLIED WITH THE TERMS OF THIS AGREEMENT, THE DEPARTMENT AGREES THAT SERVICE PROVIDER SHALL NOT BE LIABLE TO THE DEPARTMENT OR TO END USERS FOR ANY SUCH LACK OF PRIVACY.

FOR ALL CLAIMS AGAINST SERVICE PROVIDER RELATING TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, AND REGARDLESS OF THE BASIS ON WHICH THE CLAIMS ARE MADE, THE SERVICE PROVIDER'S LIABILITY FOR DIRECT DAMAGES SHALL BE LIMITED TO \$1,000,000.

THESE LIMITATIONS SHALL NOT APPLY TO CLAIMS ARISING UNDER THE INDEMNIFICATION PROVISIONS IN THIS AGREEMENT, OR UNDER SECTIONS 15.9 (COMPLIANCE WITH LAWS) OR 15.10 (E-RATE) OF THIS AGREEMENT.

## ***Contract 13.0 - INDEMNIFICATION***

### **13.01 Indemnification**

Sprint will indemnify and defend State, the Department, the SUNCOM Clients and the End Users, and their officers, agents, and employees against all third party claims for damages, losses, liabilities, or expenses, including reasonable attorney's fees, arising directly from performance of this Agreement and relating to personal injury, death, or damage to tangible personal property

that is alleged to have resulted, in whole or in part, from the negligence of Service Provider or its authorized agents, employees, partners, or subcontractors.

**13.02 Conditions to Indemnification**

Service Provider's obligations under the preceding paragraph with respect to any legal action are contingent upon the party seeking indemnification giving Service Provider (i) written notice of any action or threatened action, (ii) the opportunity to participate at the Department's expense with Service Provider maintaining control over the claim or action. Service Provider shall not finalize any settlement with respect to the State, the Department, a SUNCOM Client or any End User in any legal action without the State's prior written consent, which shall not be unreasonably withheld.

***Contract 14.0 - DISPUTES***

Any dispute concerning performance arising between the parties relating to this Agreement, which is not resolved by mutual agreement of the parties, will be promptly submitted in writing to the other party in accordance with the Notice requirements of the contract. The parties shall designate individuals with authority to resolve the dispute and such individuals shall work diligently and in good faith to resolve the dispute within thirty (30) days. In the event the parties are unable to resolve the dispute within sixty (60) days, any dispute concerning performance of the Agreement shall be decided by the Department's Contract Manager, who shall reduce the decision to writing and serve a copy on Service Provider. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, Service Provider files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to Service Provider's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to Service Provider's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120. Billing disputes shall be resolved pursuant to Section 215.422 of the Florida Statute.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate State court in Leon County, Florida. In any such action, Florida law shall apply and the parties waive any right to jury trial.

***Contract 15.0 - MISCELLANEOUS***

**15.01 Annual Appropriations**

The State's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Legislature.

**15.02 Waiver**

The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**15.03 Public Records**

The Department may terminate this Agreement if Service Provider refuses to allow public access to all documents, papers, letters, or other material made or received by Service Provider in

conjunction with this Agreement, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and Section 119.07(1), Florida Statutes.

**15.04 Contractual Obligations**

Neither party is authorized to act as an agent for, or legal representative of, the other party, nor shall either party have authority to assume or create any obligation on behalf of, in the name of, or that shall be binding upon, the other party.

**15.05 No Subcontracting**

The Service Provider may not subcontract any of the Services without the Department's prior written consent. The Service Provider shall not be released of its contractual obligation to the Department because of any subcontract.

**15.06 Notices**

Except as otherwise provided in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be delivered (a) personally; (b) by certified mail, return receipt requested; (c) by an overnight courier service having a record of receipt; or (d) by facsimile, with a confirming copy sent by one of the other three methods described in this sentence. Notices shall be addressed as follows:

(a) If to Department, notice shall be sent to the Contract Administrator and the Contract Manager (see Section 6.05 above).

(b) If to Service Provider:  
Attn: Legal Dept. – Public Sector  
12502 Sunrise Valley Drive  
MS: VARESA0208  
Reston, VA 20196  
Fax: (703) 433-8798

*with a copy to:*  
Attn: Tracy Srodes  
Sprint Branch Manager, Florida Public Sector  
4914 S Tamiami Trail  
Sarasota, FL 34231

Any party hereto may change its address by a notice given to the other party hereto in the manner set forth above. All notices shall be effective on receipt.

**15.07 Force Majeure**

Each party's performance under this Agreement shall be excused if such non-performance is due to labor difficulties, governmental orders, civil commotion, acts of nature, weather disturbances or adverse weather conditions, and other circumstances beyond the party's reasonable control.

**15.08 Ethical Responsibilities**

Each party shall be governed in all its dealings with respect to this Agreement by the highest standards of honesty, integrity, and fair dealing. Notwithstanding, the Department shall meet the requirements of Chapter 112, Florida Statutes where applicable.

**15.09 Compliance With Laws**

Service Provider and the Department shall at all times comply in all material respects with all laws, rules, codes, ordinances, and licensing requirements and regulations applicable to the performance of this Agreement and the conduct of their business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287, Florida Statutes, and Chapters 60A-1 and 60FF, Florida Administrative Code, governs the Agreement. By way of further non-exhaustive example, Service Provider shall comply with Section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Agreement termination.

For additional information regarding SUNCOM rules and statutes, please reference the following link: [http://dms.myflorida.com/suncom/suncom\\_customer\\_resources/rules\\_and\\_statutes](http://dms.myflorida.com/suncom/suncom_customer_resources/rules_and_statutes).

**15.10 E-Rate**

The Schools and Libraries Program of the federal Universal Service Fund, commonly known as "E-Rate," is administered by the Universal Service Administrative Company (USAC), through its Schools and Libraries Division (SLD), under the direction of the Federal Communications Commission (FCC). The program provides discounts to assist most schools and libraries in the United States to obtain affordable eligible telecommunications, Internet access, and internal connections. SUNCOM Clients who have applied for E-Rate funding for eligible services and equipment from Service Provider are referred to herein as "E-Rate SUNCOM Clients."

Service Provider must have obtained or applied to obtain a Service Provider Identification Number (SPIN) from USAC prior to execution of the Agreement and shall provide relevant SPIN(s) to the Department. Service Provider also is required to submit a Service Provider Annual Certification (SPAC) (Form 473) to USAC each funding year to certify that it will comply with E-Rate rules and regulations. Service Provider shall maintain eligibility as an E-Rate service provider and shall avoid being placed on Red Light status by the FCC for the duration of the Agreement.

During the term of the Agreement, Service Provider shall be required to take all appropriate action to provide services in compliance with the terms and conditions of the Agreement and E-Rate rules and regulations. If Service Provider becomes ineligible as an E-Rate service provider during the term of the Agreement or becomes unwilling or unable to provide E-Rate eligible services in compliance with the Agreement and E-Rate rules and regulations, the Department and its E-Rate SUNCOM Clients shall change service providers and, if applicable, seek substitute services in accordance with applicable E-Rate rules and procedures. If during the term of the Agreement, due to circumstances within Service Provider's control, Service Provider becomes ineligible as an E-Rate service provider, becomes unwilling or unable to provide E-Rate eligible services in compliance with E-Rate rules and regulations or the Agreement, or violates E-Rate rules and regulations in a way that causes USAC to deny E-Rate SUNCOM Clients funding in whole or in part, the following shall apply:

- A.** Service Provider shall be liable for the actual direct damages incurred by the Department and any affected E-Rate SUNCOM Clients that have complied with the applicable E-Rate rules and regulations.
  - 1.** In the event that the Department and its E-Rate SUNCOM Clients change service providers and seek substitute services pursuant to the above paragraph, direct



damages shall include but not be limited to any amounts paid to the substituted service provider above Service Provider's price under this Agreement. In the event the Department or such E-Rate SUNCOM Clients are unable to obtain USAC approval to change to the new provider as a provider under E-Rate rules and such USAC denial is a result of Service Provider's intentional acts, gross negligence or willful misconduct, Service Provider will also be liable for the amount of E-Rate funding forfeited as a result.

2. Service Provider shall continue to provide the affected services to the Department and any affected E-Rate SUNCOM Client until such time as the Department and any affected E-Rate SUNCOM Client obtains services from a new service provider as set forth above (Transition Period). If the Department or E-Rate SUNCOM Clients are unable to obtain E-Rate funding for the Service Provider services for the Transition Period as a result of Service Provider's intentional acts, gross negligence or willful misconduct, the Department and E-Rate SUNCOM Client will not be responsible to pay Service Provider for the amounts left unfunded by E-Rate for that Transition Period.
3. If Service Provider violation of the E-Rate rules and regulations is a reason for E-Rate SUNCOM Clients' loss or forfeiture of E-Rate funding, in whole or in part, the value of the lost funding associated with Service Provider violation will be considered direct damage under this subparagraph (i)A.

Any damages paid for by the Service Provider in relation to Sections A (1-3) above, shall be limited to each individual SUNCOM Client's total net payments for the affected Services purchased in the 12 months prior to the event giving rise to the claim. Additionally, in no event shall Service Provider be liable for direct damages as set forth in 1. or 3. above or be required to perform as set forth in 2. above, beyond the last day of the E-Rate funding year in which Service Provider becomes ineligible as a provider under E-Rate, becomes unwilling or unable to provide E-Rate eligible services in compliance with E-Rate rules and regulations or the Agreement, or violates E-Rate rules and regulations in a way that causes USAC to deny E-Rate SUNCOM Clients funding in whole or in part.

In addition, for purposes of clarification and to avoid confusion, the Department will not hold Service Provider responsible and Service Provider will not be liable pursuant to subparagraph A. above, if Service Provider becomes ineligible as an E-Rate provider during the term of the Agreement, becomes unwilling or unable to provide E-Rate eligible services in compliance with E-Rate rules and regulations or the Agreement, or violates E-Rate rules and regulations in a way that causes USAC to deny E-Rate SUNCOM Clients funding in whole or in part, due to circumstances that are determined to be beyond Service Provider's control.

- B.** Invoicing. The Department acknowledges that it has posted an E-Rate Form 470 in connection with the procurement, which is a prerequisite to E-Rate eligible entities utilizing the Agreement awarded as a result of the procurement as the basis of E-Rate funding applications. Additionally, the Department acknowledges that some SUNCOM Clients may be eligible and apply for discounts under E-Rate. Both Service Provider and the Department agree that:

1. E-Rate has specific rules and regulations regarding the manner in which USAC and SLD approve funding requests, are presented billing and conducts audits in connections with funding under the E-Rate program; and
2. In order to ensure that the billing mechanisms and processes established pursuant to this Agreement with respect to the applications of SUNCOM Clients for discounts under the E-Rate program are in compliance with the E-Rate program requirements and regulations, the duties and responsibilities of each party are set forth in Section 5.07.06 (Invoicing) of the Business Process and Operations **Exhibit 2 – Business Process and Operation.**

**15.11 Advertising**

Subject to Chapter 119, Florida Statutes, Service Provider shall not publicly disseminate any information concerning the Agreement without prior written approval from the Department, including, but not limited to mentioning the Agreement in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking Service Provider's name and either a description of the Agreement or the name of the State, the Department or any SUNCOM Client in any material published, either in print or electronically, to any entity that is not a party to Agreement, except potential or actual authorized distributors, dealers, resellers, or service representative.

**15.12 Assignment**

No rights or obligations hereunder shall be assigned or delegated, in whole or in part, by either party to any other person, firm, corporation, or other entity without the other party's prior written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Service Provider may assign this Agreement to an entity to whom the outstanding common stock or substantially all the assets of Service Provider are transferred after first receiving FCC and other necessary governmental approvals with notification to the Department. For purposes of this provision, any change in the ultimate control of a party, by stock sale, merger, consolidation, or any other means, shall constitute an assignment subject to written notification to the other party.

**15.13 Employees, Subcontractors, and Agents**

All Service Provider employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Service Provider shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. The State may conduct, and Service Provider shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Service Provider. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Department's security or other requirements. Such approval shall not relieve Service Provider of its obligation to perform all work in compliance with the Agreement. The State may reject and bar from any facility for cause any of Service Provider's employees, subcontractors, or agents.

**15.14 Governmental Restrictions**

If Service Provider believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Agreement, Service Provider shall immediately notify the Department in writing, indicating the

specific restriction. The Department reserves the right and the complete discretion to accept any such alteration or to cancel the Agreement at no further expense to the Department.

**15.15 Lobbying and Integrity**

The Service Provider shall not, in connection with this or any other agreement with the State, directly or indirectly (i) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (ii) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (ii), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, Service Provider shall provide any type of information the Inspector General deems relevant to Service Provider's integrity or responsibility. Such information may include, but shall not be limited to, Service Provider's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Service Provider shall retain such records for the longer of (i) three years after the expiration of the Agreement or (ii) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Service Provider agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of Service Provider's compliance with the terms of this or any other agreement between Service Provider and the State which results in the suspension or debarment of Service Provider. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Service Provider shall not be responsible for any costs of investigations that do not result in Service Provider's suspension or debarment.

**15.16 Warranty of Ability to Perform**

The Service Provider warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Service Provider's ability to satisfy its obligations hereunder. The Service Provider warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to Section 287.133, Florida Statutes, or on any similar list maintained by any other state or the federal government. The Service Provider shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Agreement.

**15.17 Modification of Terms**

The Agreement contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and Service Provider. The Agreement may only be modified or amended upon mutual written agreement of the Department and Service Provider. No oral agreements or representations shall be valid or binding upon the Department or Service Provider. No alteration or modification of the Agreement terms, including substitution of product, shall be valid or binding against the Department. The Service Provider may not unilaterally modify the terms of the Agreement by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto Service Provider's order or fiscal forms or other documents forwarded by Service Provider for payment. The Department's acceptance of product or

processing of documentation on forms furnished by Service Provider for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

If a SUNCOM Client or the Department previously entered into a written agreement for the purchase of any Service from Service Provider, the provisions of such earlier agreement shall be subject to the terms for transition as set forth in Exhibit 2 (Business Operations) and no early cancellation fees shall apply.

**15.18 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

**15.19 Execution in Counterparts**

The Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**15.20 Severability**

If a court deems any provision of the Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

**15.21 \*FHP and Associated or Similar Number**

Service Provider allows the Department, SUNCOM Clients and its End Users in Florida to dial \*FHP at no additional charge.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the dates signed below.

STATE OF FLORIDA, DEPARTMENT OF  
MANAGEMENT SERVICES

By: [Signature]  
Print Name: BRETT RAYMAN  
Title: CHIEF OF STAFF  
Date: 1/13 2012

SPRINT SOLUTIONS, INC.

By: [Signature]  
Print Name: Carolyn Rehling  
Title: Regional Vice President  
Date: 1/12/12

Approved as to form and legality by DMS Office of the General Counsel

By: [Signature]  
Print Name: Kristin Klein  
Date: 1/13/12

Sprint -- Approved  
as to Legal Form  
HRF  
12 Jan 12

